MONTANA ADMINISTRATIVE REGISTER

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ISSUE NO. 11

The Montana Administrative Register (MAR or Register), a twice-monthly publication, has three sections. The Proposal Notice Section contains state agencies' proposed new, amended, or repealed rules; the rationale for the change; date and address of public hearing; and where written comments may be submitted. The Rule Adoption Section contains final rule notices which show any changes made since the proposal stage. All rule actions are effective the day after publication of the adoption notice unless otherwise specified in the final notice. The Interpretation Section contains the Attorney General's opinions and state declaratory rulings. Special notices and tables are found at the end of each Register.

Inquiries regarding the rulemaking process, including material found in the Montana Administrative Register and the Administrative Rules of Montana, may be made by calling the Secretary of State's Office, Administrative Rules Services, at (406) 438-6122.

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BEFORE THE DEPARTMENT OF TRANSPORTATION
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to Alternative Project Delivery Methods	)))))	NOTICE OF PROPOSED ADOPTION NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On July 10, 2023, the Department of Transportation proposes to adopt the above-stated rule.

2. The Department of Transportation will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require accommodation, contact the Department of Transportation no later than 5:00 p.m. on June 30, 2023, to advise us of the nature of the accommodation that you need. Please contact John Pavsek, Department of Transportation, Alternative Contracting Section Supervisor, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6213; fax (406) 444-9263; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail jpavsek@mt.gov.

3. The rule proposed to be adopted provides as follows:

NEW RULE I ALTERNATIVE CONTRACT PROJECT DELIVERY METHODS (1) Construction manager general contractor experience will not be a required scoring criteria for highway construction projects.

(2) The department must weight the in-person interview of each shortlisted proposer as at least half of the technical score. The technical proposal will account for the balance of the technical score.

AUTH: 60-2-201, 60-3-101, MCA
IMP: 60-2-111, 60-2-112, 60-2-134, 60-2-201, MCA; Ch. 145, L. 2023, Section 1

REASON: The 2023 Legislature enacted Senate Bill 57 (SB 57), Ch 145, L. 2023. SB 57 allows the Transportation Commission and the department to use alternative project delivery methods for letting contracts, including the directive that each proposer submit a technical proposal for the department to score. Proposed New Rule I will ensure that no construction manager or general contractor experience will be required of responding parties for highway construction projects using alternative contract delivery. Proposed New Rule I is necessary to implement the bill and provide consistent scoring criteria for project proposals.

4. Concerned persons may submit their data, views, or arguments concerning the proposed action in writing to: John Pavsek, Department of Transportation, Alternative Contracting Section Supervisor, P.O. Box 201001, Helena, Montana, 59620-1001; telephone (406) 444-6213; fax (406) 444-9263; TTY Service (800) 335-7592 or through the Montana Relay Service at 711; or e-mail jpavsek@mt.gov, all of which must be received no later than 5:00 p.m., July 7, 2023.

5. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to John Pavsek at the above address no later than 5:00 p.m., July 7, 2023.

6. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be one person based on seven contractors who have bid on alternative contracting projects during SFY 2023 to date.

7. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 4 above or may be made by completing a request form at any rules hearing held by the department.

8. An electronic copy of this proposal notice is available through the Department of Transportation website at www.mdt.mt.gov.

9. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted by email and U.S. mail on March 24, 2023.

10. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

11. With regard to the requirements of 2-15-142, MCA, the department has determined that the adoption of the above-referenced rule will not have direct tribal implications.

/s/ Valerie A. Balukas
Valerie A. Balukas
Rule Reviewer

/s/ Malcolm D. Long
Malcolm D. Long
Director
Department of Transportation

Certified to the Secretary of State May 30, 2023.

BEFORE THE DEPARTMENT OF JUSTICE
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 23.3.140, 23.3.147, and 23.3.507 and the repeal of ARM 23.3.101 and 23.3.135 pertaining to driver licensing and licensing operators of commercial motor vehicles	))))))	NOTICE OF PROPOSED AMENDMENT AND REPEAL NO PUBLIC HEARING CONTEMPLATED

TO: All Concerned Persons

1. On November 13, 2023, the Department of Justice proposes to amend and repeal the above-stated rules.

2. The Department of Justice will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the Department of Justice no later than 5:00 p.m. on June 23, 2023, to advise us of the nature of the accommodation that you need. Please contact Brittany Hansen, Department of Justice, Motor Vehicle Division, 302 North Roberts, Scott Hart Building, P.O. Box 201430, Helena, Montana, 59620-1430; telephone (406) 444-3638; fax (406) 444-2086; or e-mail brittany.hansen@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

23.3.140 MAIL AND ONLINE RENEWALS (1) ~~If a person is temporarily out of state and will not be returning to Montana prior to the expiration of the person's noncommercial driver's license, the~~ A person may apply by mail or online~~, upon a form prescribed by the department,~~ for the renewal of the license ~~by mail~~ on a form prescribed by the department.

(2) Mail and online renewal applications must be submitted within the grace period prescribed in 61-5-111, MCA, and must be accompanied by the appropriate license fees~~, an eye examination report (form 22-1801) completed by a licensed opthalmologist or optometrist, and a driver medical evaluation report (form 20-1900) completed by a licensed physician~~. ~~If the department does not have a digitized photograph or signature record of the renewal applicant, the applicant must also submit a color head and shoulders photograph of the applicant no larger than 2 x 2 inches in size and an exemplar of the applicant's signature.~~

(3) A commercial driver's license that does not include a hazardous endorsement may also be renewed by mail or online ~~if the licensee is temporarily out of state and will not be returning to Montana prior to the expiration of the license~~. In addition to completing the requirements of (2), the applicant must also ~~submit a copy of the applicant's~~ have a current ~~DOT card~~ medical examiner's certificate on file with the department.

AUTH: ~~61-5-125~~ 61-14-201, MCA
IMP: 61-5-111, MCA

REASON: These amendments are necessary to facilitate online transactions for Montana residents to reduce wait times and to reduce the need for office visits for residents that fit the updated criteria to renew their license or identification cards. The authority and implementation statutes were reviewed and updated. Section 61-5-125, MCA, was repealed and replaced in 2019, Sec. 26, Ch. 335, L. 2019.

23.3.147 IDENTIFICATION CARDS (1) A person who is a Montana resident and who is not the holder of a valid Montana driver's license ~~from a jurisdiction other than Montana~~ may apply for an identification card.

(2) A person who is the holder of a valid driver's license or identification card from a jurisdiction other than Montana may apply for a Montana identification card upon surrender of their identification card or driver's license from that jurisdiction.

~~(2)~~(3) ~~An~~ A first-time applicant for an identification card ~~applicant~~ must appear in person at a Montana driver's examination station, submit a completed application, on a form prescribed by the department, and provide proof of his or her identity and date of birth in accordance with ARM 23.3.131 and proof of Montana residence in accordance with ARM 23.3.130. If the applicant has separate mailing and residence addresses, both addresses must be included on the application. Identification cards may be renewed online without the need to appear in person at a Montana driver's examination station.

~~(3)~~(4) Except as provided in ~~(4) and (5)~~(a) and (b), the fee for an identification card is ~~$8~~ defined in 61-12-504, MCA. ~~A receipt for payment of the fee is valid to obtain an identification card for a period of 12 months.~~

(4) and (5) remain the same, but are renumbered (a) and (b).

~~(6)~~(5) ~~A duplicate identification card will not be issued if a card is lost or destroyed or the personal information on the card has changed. However, the individual may apply for a new identification card.~~ A replacement identification card may be issued to a customer if the card is lost or stolen or to reflect changes to the personal information on the card.

~~(7)~~(6) ~~If an identification card applicant already has a Montana driver's license, the personal information submitted for the identification card must be identical to the personal information contained in the driver record maintained by the department for the applicant.~~ A person may only possess one driver's license or identification card at a time.

(8) remains the same, but is renumbered (7).

AUTH: ~~61-12-502~~ 61-14-201, MCA
IMP: 61-12-501, 61-12-502, 61-12-504, 61-14-201, MCA

REASON: These amendments are necessary to enable replacement or renewal of identification cards, in person, online, or by mail and to align the rule with changes made to the motor vehicle statutes by Senate Bill 487, Ch. 686, L. 2023. The

authority and implementation statutes were reviewed and updated. Section 61-12-502, MCA, does not contain rulemaking authority.

23.3.507 MEDICAL STATEMENT REQUIRED FOR TYPE 2 ENDORSEMENT--EXCEPTION (1) through (3) remain the same.

(4) A medical statement is not required if an applicant drives a commercial motor vehicle exclusively for one of the following activities:

(a) as a federal, state, or local government employee;

(b) to transport human corpses or sick or injured persons;

(c) as a fire truck or rescue vehicle driver during emergencies and other related activities;

(d) to primarily transport propane winter heating fuel when responding to an emergency condition requiring immediate response, such as damage to a propane gas system after a storm or flooding;

(e) if responding to a pipeline emergency condition requiring immediate response, such as a pipeline leak or rupture;

(f) when custom harvesting on a farm or transporting custom-harvested crops to storage or market;

(g) as a beekeeper in the seasonal transportation of bees; or

(h) as a farm vehicle operator, except when operating a combination commercial motor vehicle.

AUTH: ~~61-5-112, 61-5-117, 61-5-125~~ 61-14-202, MCA
IMP: 61-5-102, 61-5-104, 61-5-105, 61-5-106, 61-5-107, 61-5-110, 61-5-111, 61-5-112, 61-5-113, 61-5-201, 61-5-206, 61-5-207, MCA

REASON: The amendments are necessary to set forth the exceptions granted for not requiring a medical statement for interstate commercial motor vehicle operators as specifically allowed under 49 CFR 390.3(f), 391.2, 391.68, or 398.3. The authority and implementation statutes were reviewed and updated. Section 61-5-112, MCA, does not contain rulemaking authority, 61-5-117, MCA, was repealed in 2003, Sec. 20, Ch. 428, L. 2003, and 61-5-125, MCA, was repealed and replaced in 2019, Sec. 26, Ch. 335, L. 2019.

4. The department proposes to repeal the following rules:

23.3.101 COUNTY TREASURERS AS FEE COLLECTING AGENTS

AUTH: 61-5-111(1), MCA
IMP: 61-5-111(1), MCA

REASON: This rule is no longer necessary for driver services because Motor Vehicle Division exam stations now accept additional forms of payment.

23.3.135 GRACE PERIOD FOR RENEWALS

AUTH: 44-1-103, MCA

IMP: 61-5-113, MCA

REASON: This rule is being repealed because it is no longer applicable due to changes made to the motor vehicle statutes by Senate Bill 487, Ch. 686, L. 2023.

5. Concerned persons may submit their data, views, or arguments concerning the proposed actions in writing to: Brittany Hansen, Department of Justice, Motor Vehicle Division, 302 North Roberts, Scott Hart Building, P.O. Box 201430, Helena, Montana, 59620-1430; telephone (406) 444-3638; fax (406) 444-2086; or e-mail brittany.hansen@mt.gov, and must be received no later than 5:00 p.m., July 7, 2023.

6. If persons who are directly affected by the proposed actions wish to express their data, views, or arguments orally or in writing at a public hearing, they must make written request for a hearing and submit this request along with any written comments to Brittany Hansen at the above address no later than 5:00 p.m., July 7, 2023.

7. If the agency receives requests for a public hearing on the proposed action from either 10 percent or 25, whichever is less, of the persons directly affected by the proposed action; from the appropriate administrative rule review committee of the Legislature; from a governmental subdivision or agency; or from an association having not less than 25 members who will be directly affected, a hearing will be held at a later date. Notice of the hearing will be published in the Montana Administrative Register. Ten percent of those directly affected has been determined to be 4,568 persons based on rule changes to ARM 23.3.147.

8. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 5 above or may be made by completing a request form at any rules hearing held by the department.

9. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

10. The bill sponsor contact requirements of 2-4-302, MCA do not apply.

11. With regard to the requirements of 2-4-111, MCA, the department has determined that the amendment and repeal of the above-referenced rules will not significantly and directly impact small businesses.

/s/ DAVID ORTLEY
David Ortley
Deputy Attorney General
Rule Reviewer

/s/ AUSTIN KNUDSEN
Austin Knudsen
Attorney General
Department of Justice

Certified to the Secretary of State May 30, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.23.301 and 24.23.304 and the repeal of ARM 24.23.313 pertaining to job growth incentive tax credit	)))))	NOTICE OF PUBLIC HEARING ON PROPOSED AMENDMENT AND REPEAL

TO: All Concerned Persons

1. On June 29, 2023, at 10:00 a.m., a public hearing will be held via remote conferencing to consider the proposed changes to the above-stated rules. There will be no in-person hearing. Interested parties may access the remote conferencing platform in the following ways:

a. Join Zoom Meeting, https://mt-gov.zoom.us/j/81804106121
Meeting ID: 818 0410 6121, Passcode: 231569
-OR-

b. Dial by telephone, +1 406 444 9999 or +1 646 558 8656
Meeting ID: 818 0410 6121, Passcode: 231569

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on June 22, 2023, to advise us of the nature of the accommodation that you need. Please contact the department at P.O. Box 1728, Helena, Montana 59624-1728; telephone (406) 444-5466; Montana Relay 711; or e-mail laborlegal@mt.gov.

3. The rules as proposed to be amended provide as follows, new matter underlined, deleted matter interlined:

24.23.301 CREDIT FOR EMPLOYER JOB GROWTH (1) Any employer seeking the tax credit must apply for the credit certificate by January 31 of the year following the tax year for which the certificate is requested for the department to provide a certification by regular tax filing dates. Applications received after that date will still be processed.

~~(2) The department must provide the credit certificate before an employer may claim a tax credit. Once a certificate is issued to an employer, the employer may claim it on a tax return. An employer must provide the credit certificate number to the Department of Revenue when claiming the tax credit on a tax return.~~

(2) The total number of employees employed by an employer for purposes of certification is based on the average monthly number of employees reported on the employer's unemployment insurance tax filings.

(3) An employer applying for certification may count employees hired across multiple tax years to meet the definition of qualifying net employee growth for purposes of certification.

AUTH: 39-11-404, MCA
IMP: 39-11-404, MCA

REASON: Reasonable necessity exists to amend (1) to provide that deadlines for applications are for the benefit of the party applying. While the department will nonetheless process the application, it may not be completed in time for tax filing deadlines of the applicant. Subsection (2) is proposed to be removed because it duplicates statute and sets forth requirements of the Department of Revenue. New (2) is proposed to clarify that, for purposes of verification, unemployment insurance tax records will establish the standard for the number of employees working for an employer. New (3) is proposed to clarify that an employer may hire employees over the course of multiple years, eventually culminating in sufficient employee growth to qualify for certification.

24.23.304 REQUIRED DOCUMENTATION (1) A complete application shall include:

(a) all information needed to determine the number of ~~full-time~~ employees ~~(FTEs)~~ employed by the company in Montana in 2021~~, including number employed and hours worked~~ and in the last calendar year;

(b) a list of all statewide employees of the employer who have been hired ~~during the last calendar year~~ in 2022 or later and claimed as qualifying new employees, along with identifying information~~;~~. In addition, for each employee listed, the employer must provide:

(i) date of hire and date of separation, if applicable;

(ii) attestation that the benefits provided are the same as typically paid to other employees of the employer; and

(iii) records of Montana-source wages paid.

~~(c) dates of hire of each employee listed;~~

~~(d) benefits provided to each employee listed;~~

~~(e) Montana-source wages paid to each employee listed during the tax year; and~~

~~(f) date of hire and date of separation if no longer employed for each employee listed.~~

(2) through (5) remain the same.

AUTH: 39-11-404, MCA
IMP: 39-11-404, MCA

REASON: Reasonable necessity exists to amend (1)(a) to reflect statutory changes which no longer expressly refer to FTE. Reasonable necessity exists to amend (1)(b) to clarify and simplify the reference to information which must be provided in the initial application as to each employee for whom an applicant seeks to request certification.

4. The rule proposed to be repealed is as follows:

24.23.313 AMERICAN RESCUE PLAN ACT SAVINGS CLAUSE

AUTH: 39-11-404, MCA
IMP: 39-11-404, MCA

REASON: Reasonable necessity exists to repeal this rule because the statute implemented has been repealed by Section 5 of House Bill 601 (2023).

5. Concerned persons may present their data, views, or arguments at the hearing. Written data, views, or arguments may also be submitted at dli.mt.gov/rules or P.O. Box 1728; Helena, Montana 59624. Comments must be received no later than 5:00 p.m., July 7, 2023.

6. An electronic copy of this notice of public hearing is available at dli.mt.gov/rules and sosmt.gov/ARM/register.

7. The agency maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by the agency. Persons wishing to have their name added to the list may sign up at dli.mt.gov/rules or by sending a letter to P.O. Box 1728; Helena, Montana 59624 and indicating the program or programs about which they wish to receive notices.

8. The bill sponsor contact requirements of 2-4-302, MCA, apply and have been fulfilled. The primary bill sponsor was contacted on May 10, 2023, by electronic mail.

9. Pursuant to 2-4-111, MCA, the agency has determined that the rule changes proposed in this notice will have a significant and direct impact upon small businesses. It is expected that Montana's small businesses which experience growth will be able to take advantage of these new rules to claim a tax credit.

10. Department staff has been designated to preside over and conduct this hearing.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 30, 2023.

BEFORE THE DEPARTMENT OF NATURAL RESOURCES
AND CONSERVATION OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I regarding the Bitterroot Valley Sanitary Landfill Controlled Groundwater Area	))))	NOTICE OF PUBLIC HEARING ON PROPOSED ADOPTION

To: All Concerned Persons

1. On July 11, 2023, at 6:00 p.m., the Department of Natural Resources and Conservation will hold a public hearing at the Groff Conference Center, located at Farmers State Bank, 103 Main Street, Victor, Montana, 59875, to consider the proposed adoption of the above-stated rule.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in this rulemaking process or need an alternative accessible format of this notice. If you require an accommodation, contact the department no later than 5:00 p.m., on June 30, 2023, to advise us of the nature of the accommodation that you need. Please contact Jamie Price, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, MT 59620-1601, 406-444-6615, or e-mail DNRCOAH@mt.gov.

3. The department proposes to adopt the following rule:

NEW RULE I BITTERROOT VALLEY SANITARY LANDFILL CONTROLLED GROUNDWATER AREA (1) There is designated a Bitterroot Valley Sanitary Landfill Controlled Groundwater Area (BVSL CGWA). The BVSL CGWA is an area of approximately 80 acres located approximately 0.80 miles south of the unincorporated town of Victor, Montana, and is generally described as follows:

(a) The BVSL CGWA includes the Bitterroot Valley Sanitary Landfill historic waste disposal pit (Facility) and the designated area where hazardous or deleterious substances exceed Montana Numeric Water Quality Standards, or the pumping of groundwater may induce contaminant migration. The area includes 80 acres located within the following legal description: S1/2S1/2 Section 31 T8N R20W; N1/2N1/2NW1/4 Section 6 T7N R20W.

(b) A map of the area within the BVSL CGWA described in (1)(a) is posted on the department's website.

(2) The following controls apply in the BVSL CGWA:

(a) Water from the upper aquifer layers where contamination exceeding DEQ-7 standards is present may not be appropriated for potable use. Water from the deeper aquifer may be appropriated for potable use with express prior written approval from the Montana Department of Environmental Quality (DEQ) pursuant to (2)(c).

(b) Except as provided in (2)(c), no new groundwater developments or changes to existing groundwater appropriations are allowed within the BVSL CGWA, and the department may not accept or process any of the following for groundwater:

(i) a Notice of Completion pursuant to 85-2-306(3), MCA;

(ii) a Replacement Well Notice, Form 634;

(iii) an Application for Beneficial Water Use Permit, Form 600GW; or

(iv) an Application for Change of Appropriation Right, Form 606.

(c) New uses, or changes of existing uses, of groundwater within the BVSL CGWA may not occur for any purpose other than monitoring water quality and quantity without the express prior written approval from DEQ. The department may accept and process the following applications and forms pursuant to 85-2-311 and 85-2-402, MCA, when the application or form is accompanied by documentation of prior written approval from DEQ and the applicant demonstrates the withdrawals will not contribute to expansion of the contaminated plume outside of the BVSL CGWA boundaries:

(i) an Application for Beneficial Use Permit, Form 600;

(ii) an Application for Change of Appropriation Right, Form 606; or

(iii) a Redundant Well Construction Notice, Form 635.

(3) Monitoring wells within the boundaries of the BVSL CGWA must be approved by DEQ. The integrity of all monitoring wells must be maintained, no seals may be removed on any closed wells, and no wells may be abandoned within the BVSL CGWA without the express prior written approval of DEQ. Monitoring wells must be installed, maintained, and abandoned in compliance with ARM Title 36, chapter 21.

(4) An applicant for a Water Use Permit, Change Authorization, or for authorization to drill a well within the boundary of the BVSL CGWA pursuant to (2)(c) must establish by clear and convincing evidence that:

(a) the well will be constructed in a manner that prohibits the contaminant from using the well as a migration pathway to another aquifer;

(b) the proposed well driller possesses a valid Montana Well Driller License; and

(c) the proposed well driller has experience drilling wells in state-controlled groundwater areas, State Superfund facilities, or Federal Superfund sites.

(5) If groundwater within the BVSL CGWA is restored to acceptable conditions, the petitioner or other qualifying petitioners may request the CGWA designation be lifted or changed in size.

(6) This rule revokes and replaces the department's February 9, 2004, Order Designating Controlled Groundwater Area In Matter of Petition No. 76H-30003426 and May 28, 2004, Modification to Order Designating Controlled Groundwater Area In Matter of Petition No. 76H-30003426.

AUTH: 85-2-506, 85-2-508, MCA
IMP: 85-2-506, 85-2-508, MCA

REASON: Section 85-2-506, MCA, authorizes the department to designate temporary or permanent controlled groundwater areas. The Department of Environmental Quality (Petitioner) filed a petition to modify the existing Bitterroot Valley Sanitary Landfill Controlled Groundwater Area (BVSL CGWA) with the department on February 22, 2022. The BVSL CGWA was established by the department's February 9, 2004, Order Designating Controlled Groundwater Area.

The Petitioner proposes to modify the existing BVSL CGWA boundary and reduce its size from 328 acres to approximately 80 acres. Data collected since the original BVSL CGWA establishes a reduction in the size of the contaminated groundwater plume. Currently only two wells within the existing BVSL CGWA boundaries continue to exhibit contaminants of concern exceeding DEQ-7 standards. A reduction in size of the BVSL CGWA will safely reduce regulations affecting the development of groundwater in those areas where hazardous or deleterious substances no longer exceed Montana Numeric Water Quality Standards, and the pumping of groundwater will not induce contaminant migration. The restriction of groundwater appropriations within the boundaries of the BVSL CGWA as modified by the proposed rule is necessary to protect public health, safety, and welfare.

The Petition and the department's Determination to Proceed with Rulemaking are available for review on the department's website.

4. Concerned persons may submit their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted in writing to: Martin Balukas, Department of Natural Resources and Conservation, 1539 Eleventh Avenue, P.O. Box 201601, Helena, MT 59620-1601, 406-444-6835, or e-mail at DNRCOAH@mt.gov, and must be received no later than 5:00 p.m., on July 12, 2023.

5. Martin Balukas, Department of Natural Resources and Conservation, has been designated to preside over and conduct this hearing.

6. The department maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this agency. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies for which program the person wishes to receive notices. Notices will be sent by e-mail unless a mailing preference is noted in the request. Such written request may be mailed or delivered to the contact person in 2 above or may be made by completing a request form at any rules hearing held by the department.

7. An electronic copy of this proposal notice is available through the Secretary of State's web site at http://sosmt.gov/ARM/Register.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. With regard to the requirements of 2-4-111, MCA, the department has determined that the adoption of the above-referenced rule will not significantly and directly impact small businesses.

/s/ Amanda Kaster
Amanda Kaster
Director
Natural Resources and Conservation

/s/ Brian Bramblett
Brian Bramblett
Rule Reviewer

Certified to the Secretary of State May 30, 2023.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of an emergency rule partially closing the Jefferson River from the Williams Bridge Fishing Access Site to the Meridian Bridge in Jefferson County	)))))	NOTICE OF ADOPTION OF EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule:

(a) There is ongoing construction at the Meridian Bridge. High waters coupled with the fact that pieces of the Meridian Bridge are being replaced create a substantial risk of structural failure.

(b) Persons floating on the Jefferson River, towards the Meridian Bridge, are at risk of injury or death because there is a possibility that the Meridian Bridge may experience structural failure or recreationists may collide with the Meridian Bridge.

(c) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 11 of the 2023 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on June 23, 2023, to advise us of the nature of the accommodation that you need. Please contact Christina Bell, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone (406) 444-4594; or e-mail cbell@mt.gov.

3. The emergency rule is effective June 1, 2023, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

RULE I JEFFERSON RIVER EMERGENCY CLOSURE (1) The Jefferson River is in Jefferson County.

(2) The Jefferson River is partially closed to persons floating between the Williams Bridge Fishing Access Site to the Meridian Bridge.

(3) This rule does not implement a closure of the Williams Bridge Fishing Access Site, but only limits access between the Williams Bridge Fishing Access Site and the Meridian Bridge.

(4) This rule will remain in effect until the department determines that the affected area of the Jefferson River is again safe for public occupancy and recreational use. Signs closing the river for floating will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA
IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Jessica Snyder, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail cbell@mt.gov. Any comments must be received no later than July 7, 2023.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on June 1, 2023.

/s/ Dustin Temple
Dustin Temple
Acting Director
Department of Fish, Wildlife and Parks

/s/ Alexander Scolavino
Alexander Scolavino
Rule Reviewer

Certified to the Secretary of State June 1, 2023.

BEFORE THE DEPARTMENT OF FISH, WILDLIFE AND PARKS
OF THE STATE OF MONTANA

In the matter of the adoption of an emergency rule closing the Alder Bridge Fishing Access Site on the Ruby River in Madison County	))))	NOTICE OF ADOPTION OF EMERGENCY RULE

TO: All Concerned Persons

1. The Department of Fish, Wildlife and Parks (department) has determined the following reasons justify the adoption of an emergency rule closing the Alder Bridge Fishing Access Site:

(a) The Ruby River is in flood stage and has caused water to channel and flood the Alder Bridge Fishing Access Site.

(b) The combination of dangerous conditions includes water covered accessways and flooding, ultimately rendering unsafe conditions for pedestrian and vehicle travel.

(c) Persons recreating at the Alder Bridge Fishing Access Site would be at risk of unsafe accessways, injury, or drowning.

(d) Therefore, as this situation constitutes an imminent peril to public health, safety, and welfare, and this threat cannot be averted or remedied by any other administrative act, the department adopts the following emergency rule. The emergency rule will be sent as a press release to newspapers throughout the state. Also, signs informing the public of the closure will be posted at access points. The rule will be sent to interested parties and published as an emergency rule in Issue No. 11 of the 2023 Montana Administrative Register.

2. The department will make reasonable accommodations for persons with disabilities who wish to participate in the rulemaking process and need an alternative accessible format of the notice. If you require an accommodation, contact the department no later than 5:00 p.m. on June 27, 2023, to advise us of the nature of the accommodation that you need. Please contact Regina Reynolds, Fish, Wildlife and Parks, 1420 East Sixth Avenue, P.O. Box 200701, Helena, MT 59620-0701; telephone 406-444-9785; or e-mail regina.reynolds@mt.gov.

3. The emergency rule is effective June 1, 2023, when this rule notice is filed with the Secretary of State.

4. The text of the emergency rule provides as follows:

RULE I ALDER BRIDGE FISHING ACCESS SITE EMERGENCY CLOSURE

(1) The Alder Bridge Fishing Access Site is located along the Ruby River in Madison County.

(2) The Alder Bridge Fishing Access Site is closed to all public occupation and recreation as signed.

(3) This rule will remain in effect until the department determines that the site is again safe for public occupancy. This will depend on the extent and the duration of the Ruby River flooding into the fishing access site. Signs closing the fishing access site will be removed when the rule is no longer effective.

AUTH: 2-4-303, 87-1-202, MCA
IMP: 2-4-303, 87-1-202, MCA

5. The rationale for the emergency rule is set forth in paragraph 1.

6. Concerned persons are encouraged to submit their comments to the department. Please submit comments along with names and addresses to: Regina Reynolds, Department of Fish, Wildlife and Parks, P.O. Box 200701, Helena, MT, 59602-0701; e-mail regina.reynolds@mt.gov. Any comments must be received no later than July 25, 2023.

7. The department maintains a list of interested persons who wish to receive notice of rulemaking actions proposed by the department or commission. Persons who wish to have their name added to the list shall make written request that includes the name and mailing address of the person to receive the notice and specifies the subject or subjects about which the person wishes to receive notice. Such written request may be mailed or delivered to Fish, Wildlife and Parks, Legal Unit, P.O. Box 200701, 1420 East Sixth Avenue, Helena, MT 59620-0701, faxed to the office at (406) 444-7456, or may be made by completing the request form at any rules hearing held by the department.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. The special notice requirements of 2-4-303, MCA have been met. All committee members and staff of the Environmental Quality Council, with addresses provided on the Montana Legislature's website (leg.mt.gov), were contacted by e-mail on June 1, 2023.

/s/ Dustin Temple
Dustin Temple
Acting Director
Department of Fish, Wildlife and Parks

/s/ Alexander Scolavino
Alexander Scolavino
Rule Reviewer

Certified to the Secretary of State June 1, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.29.1433 and 24.29.1538 pertaining to workers' compensation medical fee schedule	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On April 14, 2023, the Department of Labor and Industry (agency) published MAR Notice No. 24-29-399 regarding the public hearing on the proposed changes to the above-stated rules, at page 319 of the 2023 Montana Administrative Register, Issue No. 7.

2. On May 18, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. No comments were received by the deadline.

3. The agency has amended ARM 24.29.1433 and 24.29.1538 as proposed.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 30, 2023.

BEFORE THE DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of ARM 24.29.1611 and 24.29.1616 pertaining to utilization and treatment guidelines and the drug formulary for workers' compensation purposes	)))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On April 28, 2023, the Department of Labor and Industry (agency) published MAR Notice No. 24-29-403 regarding the public hearing on the proposed changes to the above-stated rules, at page 398 of the 2023 Montana Administrative Register, Issue No. 8.

2. On May 18, 2023, a public hearing was held on the proposed changes to the above-stated rules via the videoconference and telephonic platform. Comments were received by the deadline.

3. The agency has thoroughly considered the comments received. A summary of the comments and the agency responses are as follows:

COMMENT 1: A commenter spoke in favor of the adoption of the Montana Utilization and Treatment Low Back Pain and Cervical Spine Injury Guidelines (Guidelines). The commenter explained that the Guidelines were drafted after substantial stakeholder involvement. The Guidelines were reviewed by a qualified group of medical providers, and the providers represented disciplines including neurological surgery, clinical psychology, occupational medicine, family medicine/sports medicine, physical therapy, and chiropractic.

RESPONSE 1: The agency acknowledges the comment.

4. The agency has amended ARM 24.29.1611 and 24.29.1616 as proposed.

/s/ QUINLAN L. O'CONNOR
Quinlan L. O'Connor
Rule Reviewer

/s/ LAURIE ESAU
Laurie Esau, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State May 30, 2023.

BEFORE THE DEPARTMENT OF PUBLIC SERVICE REGULATION
OF THE STATE OF MONTANA

In the matter of the amendment of ARM 38.5.1010 pertaining to construction of utility lines and facilities	))))	NOTICE OF AMENDMENT

TO: All Concerned Persons

1. On February 10, 2023, the Department of Public Service Regulation published MAR Notice No. 38-5-260 pertaining to the proposed amendment of the above-stated rule at page 152 of the 2023 Montana Administrative Register, Issue Number 3. On April 14, 2023, the department published a Second Notice of Proposed Amendment and Extension of Comment Period at page 322 of the 2023 Montana Administrative Register, Issue Number 7.

2. No requests for a public hearing were received. The department did not receive any written comments.

3. The department has amended the above-stated rule as proposed.

/s/ DANIEL POLKOW
Daniel Polkow
Rule Reviewer

/s/ JAMES BROWN
James Brown
President
Public Service Commission

Certified to the Secretary of State May 30, 2023.

BEFORE THE SECRETARY OF STATE
OF THE STATE OF MONTANA

In the matter of the adoption of New Rule I pertaining to the Business Services annual report filing fee waiver in 2024	))))	NOTICE OF ADOPTION

TO: All Concerned Persons

1. On January 13, 2023, the Secretary of State published MAR Notice No. 44-2-264 pertaining to the public hearing on the proposed adoption of the above-stated rule at page 9 of the 2023 Montana Administrative Register, Issue Number 1.

2. On February 3, 2023, a public hearing was held on the proposed adoption of the above-stated rule. There were no attendees at the public hearing. Written comments were received during the public comment period.

3. The Secretary of State has thoroughly considered the comments received. A summary of the comments and SOS's responses are as follows:

COMMENT #1: A commenter from the National Federation of Independent Business (NFIB) provided written comments noting full support of the adoption of New Rule I pertaining to the annual report filing fee waiver in 2024. The NFIB appreciates the commitment to support Montana businesses.

RESPONSE #1: The Secretary of State appreciates the support and opportunity to further serve the businesses of Montana.

COMMENT #2: A commenter from the Montana Chamber of Commerce provided written comments noting full support of the adoption of the proposed rule pertaining to the annual report filing fee waiver in 2024. The proposed rule offers a great example of steady efforts to improve Montana's business climate.

RESPONSE #2: The Secretary of State appreciates the support and opportunity to further serve the businesses of Montana.

4. The Secretary of State has adopted New Rule I (44.5.303) as proposed.

/s/ AUSTIN MARKUS JAMES
Austin Markus James
Rule Reviewer

/s/ CHRISTI JACOBSEN
Christi Jacobsen
Secretary of State

Dated this 30th day of May, 2023.

NOTICE OF FUNCTION OF ADMINISTRATIVE RULE REVIEW COMMITTEES

Interim Committees and the Environmental Quality Council

Administrative rule review is a function of interim committees and the Environmental Quality Council (EQC). These interim committees and the EQC have administrative rule review, program evaluation, and monitoring functions for the following executive branch agencies and the entities attached to agencies for administrative purposes.

Economic Affairs Interim Committee

- Department of Agriculture
- Department of Commerce
- Department of Labor and Industry
- Department of Livestock
- Office of the State Auditor (Commissioner of Securities and Insurance)
- Office of Economic Development
- Division of Banking and Financial Institutions
- Alcoholic Beverage Control Division
- Cannabis Control Division

Education Interim Committee

- State Board of Education
- Board of Public Education
- Board of Regents of Higher Education
- Office of Public Instruction
- Montana Historical Society
- Montana State Library

Children, Families, Health, and Human Services Interim Committee

- Department of Public Health and Human Services

Law and Justice Interim Committee

- Department of Corrections
- Department of Justice

Energy and Telecommunications Interim Committee

- Department of Public Service Regulation

Revenue Interim Committee

- Department of Revenue
- Montana Tax Appeal Board

State Administration and Veterans' Affairs Interim Committee

- Department of Administration
- Montana Public Employee Retirement Administration
- Board of Investments
- Department of Military Affairs
- Office of the Secretary of State
- Office of the Commissioner of Political Practices

Transportation Interim Committee

- Department of Transportation
- Motor Vehicle Division (Department of Justice)

Environmental Quality Council

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

Water Policy Interim Committee (where the primary concern is the quality or quantity of water)

- Department of Environmental Quality
- Department of Fish, Wildlife and Parks
- Department of Natural Resources and Conservation

These interim committees and the EQC have the authority to make recommendations to an agency regarding the adoption, amendment, or repeal of a rule or to request that the agency prepare a statement of the estimated economic impact of a proposal. They also may poll the members of the Legislature to determine if a proposed rule is consistent with the intent of the Legislature or, during a legislative session, introduce a bill repealing a rule, or directing an agency to adopt or amend a rule, or a Joint Resolution recommending that an agency adopt, amend, or repeal a rule.

The interim committees and the EQC welcome comments and invite members of the public to appear before them or to send written statements in order to bring to their attention any difficulties with the existing or proposed rules. The mailing address is P.O. Box 201706, Helena, MT 59620-1706.

HOW TO USE THE ADMINISTRATIVE RULES OF MONTANA AND THE MONTANA ADMINISTRATIVE REGISTER

Definitions:

Administrative Rules of Montana (ARM) is a looseleaf compilation by department of all rules of state departments and attached boards presently in effect, except rules adopted up to three months previously.

Montana Administrative Register (MAR or Register) is an online publication, issued twice-monthly, containing notices of rules proposed by agencies, notices of rules adopted by agencies, and interpretations of statutes and rules by the Attorney General (Attorney General's Opinions) and agencies (Declaratory Rulings) issued since publication of the preceding Register.

Use of the Administrative Rules of Montana (ARM):

Known Subject

1. Consult ARM Topical Index.
   Update the rule by checking recent rulemaking and the table of contents in the last Montana Administrative Register issued.

Statute

2. Go to cross reference table at end of each number and title which lists MCA section numbers and department corresponding ARM rule numbers.

RECENT RULEMAKING BY AGENCY

The Administrative Rules of Montana (ARM) is a compilation of existing permanent rules of those executive agencies that have been designated by the Montana Administrative Procedure Act for inclusion in the ARM. The ARM is updated through December 31, 2022. This table includes notices in which those rules adopted during the period December 9, 2022, through May 26, 2023, occurred and any proposed rule action that was pending during the past 6-month period. (A notice of adoption must be published within six months of the published notice of the proposed rule.) This table does not include the contents of this issue of the Montana Administrative Register (MAR or Register).

To be current on proposed and adopted rulemaking, it is necessary to check the ARM updated through December 31, 2022, this table, and the table of contents of this issue of the Register.

This table indicates the department name, title number, notice numbers in ascending order, the subject matter of the notice, and the page number(s) at which the notice is published in the 2022 or 2023 Montana Administrative Register.

To aid the user, this table includes rulemaking actions of such entities as boards and commissions listed separately under their appropriate title number.

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CHRISTI JACOBSEN
SECRETARY OF STATE

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